

RESOLUTION No. 2008-1809

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AUTHORIZING AND DIRECTING THE TOWN MANAGER AND THE TOWN CLERK TO EXECUTE AN AGREEMENT WITH U.S. WRECKING AND LAND CLEARING, INC. FOR THE DEMOLITION AND DISPOSAL OF THE SURFSIDE COMMUNITY CENTER BUILDING AND ALL RELATED FACILITIES AT 9301 COLLINS AVENUE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside issued an Invitation to Bid (ITB) dated November 30, 2007 for the deconstruction, demolition and disposal of the Surfside Community Center and all related facilities at 9301 Collins Avenue; and

WHEREAS, the Town received Nine Bids in response to said ITB and found U.S. Wrecking and Land Clearing to be the lowest responsive bidder submitting a bid in the amount of \$55,000 for the Demolition of the Surfside Community Center construction, \$31,000 for Asbestos Abatement and \$9,000 for fencing

NOW, THEREFORE, THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY RESOLVES:

Section 1. That the above and foregoing recitals are true and correct

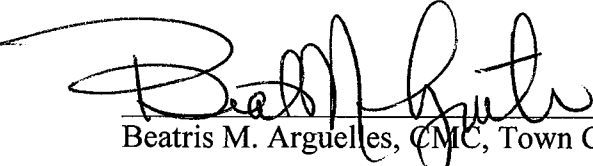
Section 2. That the Town Manager and the Town Clerk are hereby authorized and directed to execute the attached Agreement between the Town and U.S. Wrecking and Land Clearing, Inc.

PASSED AND ADOPTED this 12th day of February, 2008



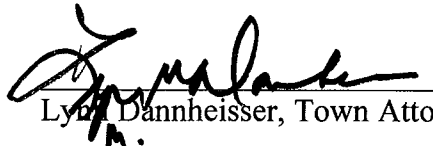
Charles W. Burkett, MAYOR

Attest:



Beatris M. Arguelles, CMC, Town Clerk

Approved as to form and legal sufficiency:



Lynn Dannheisser, Town Attorney

**AGREEMENT BETWEEN
THE TOWN OF SURFSIDE, FLORIDA**

AND

U.S. WRECKING AND LAND CLEARING, INC.

THIS AGREEMENT is made between **U.S. WRECKING AND LAND CLEARING, INC.**, a Florida corporation, (hereinafter the "Contractor"), and the **TOWN OF SURFSIDE, FLORIDA**, a Florida municipal corporation, (hereinafter the "Town") (each a "Party", collectively, the "Parties").

WHEREAS, the Contractor and Town, have agreed upon a scope of services, schedule, and fee for the Deconstruction, Demolition and Disposal of the Surfside Community Center Building and all related facilities at 9301 Collins Avenue (the "Project" or the "Work"); and

WHEREAS, the Town desires to engage the Contractor to perform the Work specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the Town agree as follows.

1.1 **The ITB.** This Agreement includes the terms of the Invitation To Bid ("ITB") issued on November 30, 2007, a copy of which is attached hereto and incorporated herein as Exhibit "A". The Services to be provided and performed with respect to the Project shall be at all times subject to the requirements of the ITB.

2.1 **Description of Project.** Contractor shall provide all labor, equipment and materials for the following:

- 2.1.1 Rodent removal prior to demolition; and
- 2.1.2 Properly capture or otherwise contain and recycle any hazardous materials, liquids or gases found on site including but not limited to refrigerants by a properly licensed Contractor who will pull any required permits; and
- 2.1.3 Disconnect and cap any existing electrical, gas and plumbing service to the one (1) building; and
- 2.1.4 Demolition of swimming pool and aquatic areas; and
- 2.1.5 Deconstruction, demolition of building and appurtenances; and
- 2.1.6 Demolition and disposal of all concrete slabs and structures from southern

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property line to western property line from the west edge of easterly seawall to existing driveway; and

- 2.1.7 Recycling of all demolition, construction debris to maximize available LEED Certification points; and
- 2.1.8 Entire site to be graded without leaving holes or high spots to the satisfaction of the Town Manager or her legally designated representative; and
- 2.1.9 Coordinate and complete Town Building Department permit prior to commencement of Work; and
- 2.1.10 Coordinate and complete required DERM and State of Florida DEP permits as required; and
- 2.1.11 Review site conditions prior to submitting Bid, including a site survey and asbestos report for buildings.
- 2.1.12 Coordinate with Town's Architect as needed or directed.

3. **Term/Commencement Date.**

- 3.1 This Agreement shall become effective upon execution by both Parties and shall remain in full force and effect for ninety (90) days. The permitting process shall begin immediately upon execution of this Agreement. All other Work shall begin upon direction of the Town Manager. The Town Manager, in her sole discretion, may extend the term of this Agreement through written notification to the Contractor.
- 3.2 Contractor's services under this Agreement and the time frames applicable to this Agreement shall commence upon the date this Agreement is executed by both Parties. The Contractor shall not incur any expenses or obligations for payment to third parties prior to the commencement of the Agreement.

4. **Compensation and Payment.**

- 4.1 Upon completion of the Project, the Contractor shall be compensated the following lump sum amounts for its performance which shall include any and all reimbursable expenses.

Demolition Work	\$55,000.00
Asbestos Abatement	\$31,000.00
Fencing	\$9,000.00

Asbestos Abatement and Fencing will only be provided if required, and approved by the Town Manager.

- 4.2 In the event that all or a portion of an invoice submitted to the Town for payment to the Contractor is disputed, or additional backup documentation is required, the Town shall notify the Contractor of such objection, modification or additional backup within fifteen (15) working days of receipt of the invoice. The Town shall pay to the Contractor the undisputed portion of the invoice. The Parties shall endeavor to resolve the dispute in a mutually agreeable fashion.
- 4.3 Submission of Contractor's invoice for final payment shall constitute the Contractor's representation to the Town that, upon receipt from the Town of the amount invoiced, all obligations to the Contractor to others, including its Contractors, incurred in connection with this Project, shall be paid in full.

5. **Town's Responsibilities.**

- 5.1 The Town shall furnish to Contractor, at the Contractor's written request, all available maps, plans, existing reports and other data pertinent to the Project to be provided by Contractor, in possession of the Town.
- 5.2 The Town shall assist Contractor by placing at its disposal all available information as may be requested in writing by the Contractor and allow reasonable access to all pertinent information relating to the Project to be performed by Contractor.
- 5.3 The Town shall arrange for access to and make all provisions for Contractor to enter upon public property as required for Contractor to complete the Project.

6. **Contractor's Warranties.**

- 6.1 The Contractor agrees while performing work under this Agreement to comply with the requirements outlined in the Invitation to Bid, attached hereto and made part of this Agreement as Exhibit "A."
- 6.2 Contractor warrants and represents that at all time during the term of this Agreement that it shall maintain in good standing all required licenses and certificates required under federal, state and local laws necessary to perform the Work specified in this Agreement.
- 6.3 Contractor warrants and represents that its employees have received sexual harassment training and that Contractor maintains appropriate sexual harassment and discrimination policies.

- 6.4 During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

7. **Termination.**

- 7.1 The Town may terminate this Agreement for convenience upon five (5) calendar days' written notice to the Contractor. In the event of termination under this section, the Contractor shall stop work on this Project and shall incur no further obligations in connection with this Project. The Contractor shall be compensated for all Work performed, and accepted by the Town up to the date of termination. The Contractor shall promptly submit its invoice for final payment and the invoice shall comply with Section 3. The Town shall not pay the Contractor for Work which has not been performed.
- 7.2 The Contractor may terminate this Agreement for convenience upon fourteen (14) calendar days written notice to the Town.

8. **Additional Services and Changes in Scope of Services.**

- 8.1 Changes in the Scope of Services consisting of additions, deletions, revisions or any combination thereof, may be ordered by the Town or Town Manager, as applicable by Change Order without invalidating this Agreement.
- 8.2 Change Order shall mean a written order to the Contractor executed by the Town or Town Manager, as applicable, issued after execution of an Agreement, authorizing and directing a change in the scope of services or an adjustment in the contract amount or the contract time, or any combination thereof. The contract amount and term may be changed only by Change Order.

9. **Insurance.**

- 9.1 The Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts as specified below naming the Town as an additional insured, underwritten by a firm qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverages shall include a minimum of:

- 9.2 Commercial General Liability. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 9.3 Comprehensive Automobile and Vehicle Liability: This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned or hired. The limit of liability shall not be less than \$100,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.
- 9.4 Worker's Compensation and Employer's Liability: Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws.
- 9.5 Upon the request of the Town, certificates of Insurance shall be provided to the Town at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days written notice shall be provided to the Town before any policy or coverage is cancelled or restricted.

10. **Attorneys' Fees and Waiver of Jury Trial.**

- 10.1 In the event of any litigation arising out of this Agreement, the prevailing Party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 10.2 In the event of any litigation arising out of this Agreement, each Party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

11. **Indemnification.**

- 11.1 The Contractor shall indemnify, save and hold harmless the Town, its officers, agents and employees, from or on account of all claims, damages, losses, obligations, penalties, fines, liabilities and expenses, direct, indirect or consequential, including, but not limited to, reasonable fees and charges of engineers, architects, attorneys, Contractor's and other professionals and trial and appellate court and arbitration costs arising out of or relating

to or resulting from the performance of the Work by the Contractor, Contractor's errors and omissions, or Contractor's compliance or failure to comply with its obligations under the Agreement, excluding claims arising from the sole negligence of Town. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (a) any and all bodily injuries, sickness, death, disease; (b) injury to or destruction of tangible personal property, including the loss of use resulting therefrom; (c) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any of the Work connected with the Project; (d) the use of any improper materials; (e) any act or omission of the Contractor or his Subcontractors, agents, servants or employees; (f) the violation of any federal, state, county or Town laws, ordinances or regulations by the Contractor, its Subcontractors, agents, servants or employees; and (g) the breach or alleged breach by Contractor of any term of the Agreement.

11.2. In the event that any claims are brought or actions are filed against the Town with respect to the indemnity contained herein, the Contractor agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed. The Town reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of the Contractor. The Town, at its sole option, shall have the sole authority for the direction of the defense, and shall be the sole judge of acceptability of any compromise or settlement of any claims or actions against the Town.

11.3 The provisions of this section shall survive termination of this Agreement.

12. **Special Conditions.**

12.1 The Contractor shall obtain all required permits for the Work.

12.2 Contractor shall coordinate with the Town Manager, or her designee, a schedule for performance of the Work. Contractor shall assign a Supervisor who shall be present at all times during the Work. The Supervisor shall be responsible for all manner and means of the Work and shall be responsible for all equipment, transport and final destination and disposal of the vegetation and litter debris to a licensed facility. Contractor shall be responsible for all equipment and expenses of removal to transfer station of same.

12.3 The Contractor shall supply all of the labor, materials, equipment, tools, apparatus, means of transportation, services and incidentals necessary for

the entire proper and substantial completion of the Work, and be accountable for the safe, proper and reasonable installation, maintenance and use of the same during construction, and shall remove all construction equipment upon completion, and shall perform all Work in the best and most workmanlike manner. Special care shall be taken by the Contractor in placing and removing material or equipment in the Work Area in general to avoid unnecessary injury to either public property or other areas adjacent to the Work. Contractor warrants that all materials, equipment, tools and apparatus to be used to perform the Work is in good working condition.

- 12.4 Time is of the essence under this Agreement. The Work shall be executed at such time, and in or on such part or parts of the Project as may be required, to complete the Work as stipulated in this Bid Form.
- 12.5 The Work shall be performed Monday through Friday between the hours of 7:30 a.m. and 5:00 p.m., excluding all legal holidays. It shall be the Contractor's responsibility to determine and observe all legal holidays.
- 12.6 The Contractor shall not perform Work beyond the time and days listed in Section 12.5 above without the prior written approval of the Town Manager. Any additional inspection costs incurred by the Town due to Work schedules beyond Section 12.5 shall be borne by the Contractor.
- 12.7 Contractor shall be responsible for the legal disposal of any and all debris, including hazardous waste, as a result of the Work, at a licensed facility. Prior to commencement of the Work, Contractor will provide the Town with the name and location of the facility that will be used for construction and demolition debris ("C&D") recycling as well as the facility that will be use for debris placement. The contractor shall provide the Town with copies of Tickets and/or Tipping Receipts for debris placement from the disposal facility. Contractor shall be required to divert 75% of C&D from disposal in landfills and incinerators as described in LEED for New Construction Version 2.2 – Materials and Resource Credits 2.1 and 2.2.
- 12.8 Use of Public Streets: The Work shall be performed in such a manner as to provide a minimum of inconvenience to the residents of the area. Any debris or other material spilled from trucks shall be removed by the Contractor and the streets shall be cleaned daily to the satisfaction of the Town.
 - i. The Contractor shall comply with the Florida Building Code, State Statute and Town Code, regarding precautions to be taken in the protection of existing vegetation, structures and utilities.
 - ii. The Contractor shall maintain access to fire hydrants and alarm boxes throughout the execution of the Work. Hydrants and fire alarm boxes

shall be kept clear and kept visible at all times unless approved otherwise. If visibility cannot be maintained, the Contractor shall provide clearly visible signs showing the location of the fire hydrant and fire alarm boxes.

- iii. The Contractor shall comply with the requirements of the Clean Air Act and the Federal Water Pollution Control Act as well as other requirements specified in those regulations and guidelines listed thereunder.

- 12.9 Existing Utilities and Structures: The Contractor shall protect from damage all utilities, structures, surface and subsurface structures, at or near the site of the Work and shall repair or restore any damage to such facilities, except utilities, resulting from failure to comply with the requirements of this Bid or the failure to exercise reasonable care in the performance of the Work. It will be the Contractor's responsibility to exercise all caution in the vicinity of any above and or underground utility. The Contractor shall be fully responsible for, and repair all damages to buildings, telephone or other cables, sewers, water pipes, pavement, driveways, walls, sprinkler systems, survey markers, or other structures, which may be encountered, whether or not specified herein. If the Contractor fails or refuses to repair any such damage promptly, the Town may have the necessary Work performed and charge the cost thereof to the Contractor.
- 12.10 The locations of existing utilities have been prepared using the best information available however, the information is not guaranteed. The Contractor shall be responsible for determining the location, character and depth of all utilities. Within two (2) days before digging, if applicable, Contractor shall notify Sunshine One Call: 800-432-4770 to find out where buried utilities (electric, gas, telephone, cable, water) are located within the Town as required by Chapter 556, Florida Statutes.
- 12.11 At points where the Contractor's operations are adjacent to utility facilities, which if damaged, might result in expense, loss, and disruption of service or other undue inconvenience to the public or to the Town, Work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. The Contractor shall not repair or attempt to repair utility damage but shall immediately contact the utility owner. The Contractor shall obtain the name, address and telephone number of each utility company to contact. The Contractor shall be solely and directly responsible to the owner and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay caused by the Contractor's operations.

- 12.12 Existing Landscaping: The Contractor shall be fully responsible for maintaining in good condition existing trees, shrubs and grass located on the Property and any adjacent or contiguous properties. The Town acknowledges that the Contractor will need to place heavy equipment on the Property and the Public Works Director or designee shall meet with the Contractor to designate a staging area for the location and storage of the Contractor's equipment during the performance of the Work as well as designating an ingress/egress from Collins Avenue to the Work site.
- 12.13 Any damage to property not repaired or replaced by the Contractor, unless allowed by the Town as part of the Work or ingress/egress area shall be restored by the Town charged against the Contractor's payment.
- 12.14 The Town shall have no liability to the Contractor for any damages to the Contractor for delay or interruption of the Project, or for any unforeseen conditions causing such delay, including underground site conditions. The Contractor's sole and exclusive remedy for any delay shall be an extension of the Project completion time. In order for the Contractor to obtain an extension of time, the Contractor shall notify the Town Manager in writing within 24 hours of any delay or interruption of the Project.
- 12.15 Clean up: The Contractor will be required to leave the Work and adjacent areas free of any accumulated debris or surplus materials upon completion of Work on a daily basis, unless otherwise directed by the Town Manager. In the event of failure or undue delay on the part of the Contractor, the Town may employ such equipment and labor as may be necessary, and charge such costs against the Contractor and deduct the amount from the monies due the Contractor for Work performed.
- 12.16 The Contractor shall secure the Work area for safety purposes daily. Prior to completion of Work, the Contractor shall clean and grade the Work area level.
- 12.17 Safety: All appropriate safety measures shall be taken by and are the responsibility of the Contractor.
- 12.18 Work shall conform to all Federal and State of Florida Statutes including any and all applicable O.S.H.A. and F.D.O.T. Regulations or Standards in effect during the life of this Agreement.
- 12.19 The Contractor shall also be responsible for coordinating all inspections of Work performed by subcontractors. Failure to contact the Town or its representatives to obtain the required inspections shall be sufficient cause for rejection of Work. The Town's representative must certify that all Work has been completed to the Town's satisfaction before payment is made.

- 12.20 The Contractor shall confer or consult with the Town's Architect as needed or directed to by the Town Manager or her designee.

13. **Notices/Authorized Representatives.**

- 13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by private postal service or by registered or certified mail with postage prepaid return receipt requested., addressed to the Parties (or their successors) at the following addresses:

For the Town: Town Manager
 Town Hall
 Town of Surfside
 9293 Harding Avenue
 Surfside, Florida 33154

For The Contractor: David Ettman
 U.S. Wrecking and Land Clearing, Inc.
 9999 NE 2nd Ave
 Suite 313
 Miami Shores Florida 33138

14. **Governing Law.**

- 14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Miami-Dade County, Florida,

15. **Entire Agreement/Modification/Amendment.**

- 15.1 This writing contains the entire Agreement of the Parties and supercedes any prior oral or written representations. No representations were made or relied upon by either Party, other than those that are expressly set forth herein.
- 15.2 No agent, employee, or other representative of either Party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Records and Audits.**

- 16.1 The Contractor shall comply with Chapter 129, Florida Statutes, as applicable. Refusal of the Contractor to comply with the provisions in this Section shall be grounds for termination for cause by the Town of this Agreement. The Contractor shall retain all records associated with this Agreement for a period of three (3) years from the date of termination.
- 16.2 All Records transmitted to the Town as a result of the Contractor providing services to the Town under this Agreement shall be the property of the Town. The Contractor shall have the right to utilize these Records for presentation purposes. Any other use of these Records by the Contractor shall require prior written permission by the Town Manager.

17. **Assignment.**

- 17.1 This Agreement shall not be assignable by Contractor unless such assignment is first approved in writing by the Town Manager. The Town is relying upon the apparent qualifications and personal expertise of the Contractor, and such firm's familiarity with the Town's area, circumstances and desires.

18. **Severability.**

- 18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

- 19.1 Contractor is and shall remain an independent contractor and is not an employee or agent of the Town. Work performed by Contractor shall be by employees of Contractor working under the supervision and direction of Contractor and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Town. Contractor agrees that it is a separate and independent enterprise from the Town.
- 19.2 Contractor shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Contractor. This Agreement shall not be construed as creating any joint employment relationship between Contractor and the Town, and the Town will not be liable for any obligation incurred by Contractor, including but not limited to unpaid minimum wages and/or overtime payments.

20. **Waiver.**

- 20.1 The failure of either Party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

21. **Survival of Provisions.**

- 21.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either Party.

22. **Prohibition Against Contingency Fees.**

- 22.1 The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. In the event the Contractor violates this provision, the Town shall have the right to terminate this Agreement without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

23. **Counterparts.**

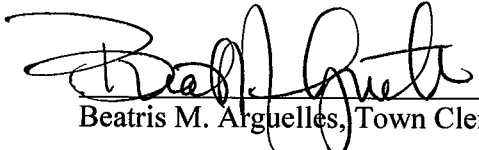
- 23.1 This Agreement may be executed in several counterparts, each of which shall be signed by each party and be deemed an original and such counterparts shall constitute one and the same instrument.


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IN WITNESS WHEREOF, the Parties execute this Agreement on the respective dates under each signature: The Town, signing by and through its Town Manager, attested to by its Town Clerk, duly authorized to execute same and by Contractor through its President, whose representative has been duly authorized to execute same.

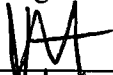
Attest:

TOWN OF SURFSIDE


Beatris M. Arguelles, Town Clerk

By: 
Pam Brangaccio, Interim Town Manager
Date: 2/12/08

US Wrecking and Land Clearing, Inc.

By: 
David Ettman, President
Date: 2/12/08

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF THE TOWN
OF SURFSIDE FLORIDA

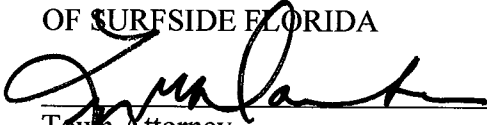

Town Attorney

EXHIBIT "A"
Invitation to Bid